

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronny LOSFELD et al.
Title: METAL STACK FOR FUEL CELLS OR ELECTROLYSERS
Appl. No.: 10/501,146
International Filing Date: 12/19/2002
371(c) Date: 7/13/2004
Patent No.: 7,585,583
Grant Date: 09/08/2009
Examiner: Kwang S. HAN
Art Unit: 1795
Confirmation Number: 6103

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 09/08/2009 as U.S. Patent No. 7,585,583.

The Patent Office determined that the patent was entitled to 918 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the

PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1454 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1456 days
(b) Total Applicant delay:	2 days
Final PTA Determination:	1454 days

Applicants therefore respectfully request that the patent be accorded 1454 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date October 8, 2009

By 

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 016782-0309

Application Number: 10/501146

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	01/15/2002	-910		
Edit Delete	International Filing Date	12/19/2002	-572		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	07/13/2004	0		
	PCT National Stage Commencement Date	07/13/2004	0		
	14 month From Application date	09/13/2005	427		
	3 Year Period Starts	07/13/2007	1,095		
Edit Delete	Non-Final Office Action	03/21/2008	1,347	(920)	
	Non-Final Office Action + 3 months	06/21/2008	1,439		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/23/2008	1,441		2
Edit Delete	Non-Final Office Action	10/16/2008	1,556		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/16/2009	1,648		
Edit Delete	Notice of Allowance	05/01/2009	1,753		
Edit Delete	Issue Fee Paid	07/29/2009	1,842		
Edit Delete	Patent Grant Date	09/08/2009	1,883	(788) 1456	
			Totals:	1,456	2
			PTA:	1,454	

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